

Assembly Bill No. 2702

Passed the Assembly August 25, 2004

Chief Clerk of the Assembly

Passed the Senate August 24, 2004

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 65852.2 of, and to add Section 65917.1 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2702, Steinberg. Housing: 2nd units.

(1) The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of 2nd units on parcels zoned for a primary single-family and multifamily residence. When the local agency has not adopted an ordinance, it is required to grant a variance or special use permit for the creation of a 2nd unit that complies with statutory requirements but may require the applicant to be an owner-occupant. Existing law specifies the floor area of a permitted 2nd unit and parking requirements.

This bill would revise the above requirements, as specified, and would provide that local agency ordinances, regulations, or policies may not preclude or effectively preclude 2nd units unless the local agency makes findings based on substantial evidence, as specified.

The bill would prohibit a local agency from adopting an ordinance that requires an owner's dependent or caregiver to occupy the primary dwelling or 2nd unit or that limits occupancy based on familial status, age, or other specified characteristics. The bill would prohibit a local agency from imposing a deed restriction requirement or other specified restriction relating to occupancy, tenure, or other characteristics, as specified. The bill would also, among other things, prohibit a local agency from establishing minimum unit size requirements for attached and detached 2nd units below 550 livable square feet unless requested by the owner and would revise the parking requirements for 2nd units.

(2) The Planning and Zoning Law also requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with incentives or concessions for the production of lower income housing units within the development if the developer meets certain requirements.

The bill would provide, with respect to those incentives, that multifamily and single-family residential use is a permitted use on



any parcel zoned and developed for primary or secondary education and residential uses. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) Except as provided in subdivisions (c), (d), (e), (f), (g), and (k), a local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance may do any of the following:

(A) Designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(B) Impose reasonable standards on second units that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(C) Provide that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.



(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be approved or disapproved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of second units.

(b) (1) When a local agency that has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, a local agency may not require a variance or discretionary permit for the creation of a second unit and shall approve an application for a second unit that complies with all of the following:

- (A) The unit is not intended for sale and may be rented.
- (B) The lot is zoned for single-family or multifamily use.
- (C) The lot contains an existing single-family dwelling.
- (D) The second unit is either attached to the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.
- (E) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to the primary dwelling in which the property is located.
- (F) Local building code requirements which apply to detached dwellings, as appropriate.
- (G) Approval by the local health officer where a private sewage disposal system is being used, if required.
- (H) The increased floor area of an attached second unit is not less than 550 square feet, unless requested by the owner.
- (I) The total floor area of a detached second unit is not less than 550 square feet, unless requested by the owner.



(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed.

(4) No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second units if these provisions are consistent with the limitations of this subdivision.

(5) A second unit that conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) Local agency ordinances, regulations, or policies may not preclude or effectively preclude second units within all residentially zoned areas unless the local agency finds, based on substantial evidence, that the ordinance may limit housing opportunities of the region and finding that specific adverse impacts upon the public health, safety, and welfare would result from allowing second units within single-family and multifamily zoned areas justify adopting the ordinance.

(1) Local governments shall apply appropriate standards as defined in Section 65913.1, and those standards shall be written, objective, and adopted by the local government.

(2) Local agencies may not require any of the following:

(A) An owner's dependent or caregiver to occupy the primary dwelling or second unit. A local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant of either the primary or second unit. A local agency may not impose a deed restriction requirement or other limitation that (i) restricts the sale of the property to owner-occupants, or (ii) restricts the occupancy of the primary or



second unit by tenure or any characteristic enumerated in Section 65008, if the applicant determines that he or she will not occupy the primary or second unit.

(B) The occupancy of either unit to be restricted by familial status, age, or any other characteristic enumerated in Section 65008.

(3) Nothing in this section shall prohibit a city, county, or city and county from regulating or prohibiting transient use of second units in which rent is charged and collected on a daily basis.

(d) A local agency may not establish minimum unit size requirements for attached and detached second units below 550 livable square feet unless requested by the owner.

(e) A local agency may not establish minimum lot size requirements for detached second units above twice the square footage of the primary unit, unless requested by the owner.

(f) Parking requirements for second units shall not exceed one parking space per unit or per bedroom. Covered parking may not be required. Local agencies may impose reasonable standards to limit on-street parking. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(g) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(h) Except as provided in subdivision (b), this section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(i) Local agencies shall submit a copy of the ordinance or ordinances adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption.

(j) As used in this section, the following terms apply:

(1) “Local agency” means a city, county, or city and county, whether general law or chartered.

(2) “Second unit” means an attached or a detached residential dwelling unit which provides complete independent living



facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes any of the following:

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.

SEC. 2. Section 65917.1 is added to the Government Code, to read:

65917.1. When a school district agrees to allow multifamily or a single-family residential use on the school district's property and agrees to adequate security features such as separate entrances that segregate the two uses, the residential density permitted on the parcel is the highest multifamily residential density permitted on any parcel within 300 feet plus any density bonus mandated by Section 65915. If there is no multifamily residential use permitted within 300 feet, the permitted residential density on the parcel being developed for primary or secondary education and residential uses is the highest multifamily residential density allowable in the community plan area.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.



Approved _____, 2004

Governor

